APPENDIX A

(Same Title)

Judgment

Kathlyn Nicole Saurí, assisted by her father, Luis J. Nicole, filed a complaint of acknowledgement of filiation against Mercedes Ortiz Berdecía, Dolores Berdecía, and Prudencio Ortiz.

The answer to the complaint joined the issue. The issues of *res judicata,* of lack of jurisdiction of the Court, and of lack of facts constituting a good cause of action were raised as defenses.

The hearing of the case on the merits as well as the discussion of the defenses were set for October 18, 1963. The parties appeared assisted by counsel and the questions of law raised by defendants were argued and finally submitted by the latter on the basis of the oral argument. Plaintiffs were given time to file their brief and offer evidence. The brief was filed on October 31, 1963.

The following are the antecedents of the complaint filed in this case:

On September 5, 1935, Mercedes Berdecía filed an action of filiation requesting acknowledgement by Félix Saurí Tyrell who, having been served with the complaint, failed to appear to challenge its allegations, for which reason default was entered. This case ended with a judgment for abandonment, but that judgment did not constitute *res judicata* inasmuch as the action was not pending when the Rules of 1943 went into effect.

On August 18, 1952, Mercedes Berdecía filed an action of filiation against the Heirs of Félix Saurí Tyrell on the ground of concubinage and possession of status.[1] This

[1] The allegations made herein in this connection are identical with those contained in the complaint filed September 5, 1935. See, *Berdecía* v. *Tyrell,* 82 P.R.R. 674 (1961).

proceeding culminated in the acknowledgement, by means of a judgment entered by our highest court in *Berdecía* v. *Tyrell*, 82 P.R.R. 674 (1961), where it is held that Mercedes Berdecía was born October 3, 1928, that she is the offspring of relations between Dolores Berdecía and Félix Saurí Tyrell, and that the latter died intestate December 3, 1938. That judgment was summarily affirmed by an order entered June 21, 1962, by the Court of Appeals for the First Circuit in *Tyrell* v. *Berdecía*, No. 6016.

On March 12, 1962, the Superior Court, Ponce Part, issued an order whose practical effect was to deprive Mercedes Berdecía of the hereditary rights inherent to her condition as a natural child judicially acknowledged. On January 25, 1963, the Supreme Court set aside that order and returned the case for further proceedings not inconsistent with the opinion disposing of the matter. The Judge who delivered the opinion, the Hon. Luis Blanco Lugo, took advantage of the opportunity to give the parties a very timely and wise advice (we copy from footnote 9 of said Opinion):

> "This litigation has been going on for ten years, and it is to the best interest of all parties concerned that it be definitely decided as soon as possible."

Now, on September 28, 1962, comes Katherine Mercedes Josephine Nicole Saurí, who is one and the same[2] Kathlyn Nicole Saurí, born in Ponce, December 19, 1955, and the daughter of Luis J. Nicole Santos and Isabel Saurí Tyrell.[2] She asks the Court to hold that Mercedes Berdecía is the legitimate child of Prudencio Ortiz and Dolores Berdecía; that she is not the natural child of another person (to wit, Félix Saurí Tyrell); that she be given all the rights of legitimized children and that she be recorded and regis-

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[2] Verification of Birth Certificate, Book No. 334, Entry No. 174, Section of Births of the Registry of Vital Statistics of Ponce.

tered with the surnames Ortiz and Berdecía following the name Mercedes.

In support of her claim that the questions of law raised and previously mentioned do not lie and that the action filed is pertinent, plaintiff herein makes use of several documents proving:

1. Mercedes Berdecía's birth.[3]

2. Photocopy of the above-mentioned complaint filed September 5, 1935.

3. Mercedes Berdecía's baptismal certificate, which baptism took place November 14, 1943, at La Merced Parish, where she appears as the acknowledged child of Prudencio Ortiz and Dolores Berdecía[4] and to which was attached the stenographic records establishing that in the case brought by Mercedes Berdecía v. Elizabeth Tyrell Howard et al. (No. 11,923 of the Supreme Court and TS-52-114 of the Superior Court), it was stated, as part of defendants' evidence, that in the baptismal record book of La Merced Parish she appears as the child of Prudencio Ortiz and Dolores Berdecía. There is also attached a page from a school record reading Mercedes O. Berdecía, daughter of Prudencio and Dolores.[6]

4. The marriage celebrated February 27, 1944, between Providencio Ortiz and Dolores Berdecía. Providencio is the same person as Prudencio Ortiz.[7]

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[3] Verification of Birth Certificate, Book No. 40, Entry No. 2323, Section of Births of the Registry of Vital Statistics of Ponce.

[4] See Exhibit 2 of plaintiffs in this case.

[5] See Exhibit 1 of plaintiff in this case.

[6] Exhibit B of plaintiffs in this case.

[7] Certified Verification of Marriage Certificate, Book No. 39, Entry No. 129, Marriage Section of the Registry of Vital Statistics of Ponce.

By means of that evidence and comprehensive arguments it is requested that the prayer of the complaint be granted because, in plaintiff's opinion, defendants' actions, as a whole, point at Mercedes Berdecía as the daughter of Prudencio or Providencio Ortiz and Dolores Berdecía, acknowledged by acts prior to their marriage, such as the baptism and codefendants' subsequent marriage.

In consideration of the foregoing and of the position of the parties, the Court makes the following:

CONCLUSIONS OF LAW

Recognition in favor of a child born out of wedlock, from parents who, at the moment when such child was born, could have intermarried, with or without dispensation, can be disputed by whomsoever may be affected thereby. Last and first paragraphs of 31 L.P.R.A. §§ 504 and 505 (§§ 125 and 126, Civil Code, 1930).

Although this complaint is entitled acknowledgement of filiation, its contents indicate that it is an attack alleging that the Court erred in *Berdecía* v. *Tyrell, supra.*

Plaintiff alleges that the acknowledged child is not the natural daughter of the person recognized by the Court as her father, but of another. Thus, it is sought to annul a judicial acknowledgment. This action, according to the Supreme Court of Spain in its judgment of March 1, 1947, seeks this end:

> "In cases of nullity, the existing appearance of acknowledgment may be challenged. The action does not really tend to annul an acknowledgment, but to overcome the appearance of validity."

Any person affected thereby is entitled to file this action (last paragraph, 31 L.P.R.A. § 505) either on the basis of hereditary or any other kind of rights. The decision in Rossy v. Martínez, 70 P.R.R. 703 establishes that "Forced

heirs are not the only ones entitled to challenge the acknowledgement of an alleged natural child made by its predecessor. By express provision of § 126 of the Civil Code (1930 ed.) the recognition made by the father in favor of a child who has not the status of a natural child, may be disputed by whomsoever may be affected thereby, among which are the widow and the testimentary heirs of the deceased." By analogy, we consider this principle applicable hereto. Now, in the judgment of December 24, 1913, the Supreme Court of Spain states that "recognition may be challenged by whoever thinks he is prejudiced thereby or has really been prejudiced in his rights" (of course, if it is shown that there was no prejudice, only the belief of having been prejudiced, the action does not lie.).

Strangers not parties to a suit may collaterally attack the judgment rendered if they show that they *have rights, claims, or interests which would be prejudiced or affected by compliance with said judgment.* Thus holds *Cancel* v. *Martínez,* 74 P.R.R. 100. (Italics ours.) Judgment in a legitimacy suit, where the child in question is not made a party thereto, is void and may be collaterally attacked by a person not a party to said suit provided he is adversely affected thereby. *Chabrán* v. *Méndez,* 74 P.R.R. 719.

We thus see that the gist of this action is that those having rights, claims, or interests that may be prejudiced by the terms of a judgment, may challenge the latter.

In this connection it is fitting to remember that plaintiff herein was born December 18, 1955, that is, 17 years and 15 days after the death of her maternal uncle, Félix Saurí Tyrell. Plaintiff has not proved that she is a person having, by law, the right she claims, inasmuch as the prejudice suffered by her on account of the judgment entered in *Berdecía* v. *Tyrell, supra,* has not been shown. We consider that plaintiff lacks standing to sue in this case; she is neither a forced nor a testamentary heir because, obviously, she can not be such, nor has the judgment entered

in *Berdecía* v. *Tyrell, supra,* resulted to her prejudice. It is clear that our decisions found the right to challenge a recognition on the principle that for every wrong, there is always a remedy. *García* v. *García,* 18 P.R.R. 926, mentioned in *Collazo* v. *Mouriño,* 51 P.R.R. 706, 708, *Agosto* v. *Javierre,* 77 P.R.R. 444 and *Pérez* v. *Superior Court,* 81 P.R.R. 805.

Moreover, assuming that plaintiff were included among those entitled to file such an action, the question whether the defense of *res judicata* lies, is still debatable.

Plaintiff rests her claim on the contents of the school record and the baptismal certificate where Prudencio Ortiz appears as Mercedes Berdecía's father. Of course, to this she adds the certificate of Prudencio Ortiz's marriage to Mercedes' mother in 1944.

> "Although the statements contained in a certificate of baptism *do not in themselves constitute evidence of filiation,* they constitute, nevertheless, *an element of proof which may be considered, which taken together with the other evidence introduced at the trial,* may serve to establish the right of the party." *Desmornes* v. *Unknown Heirs of Adolfo Desmornes,* 13 P.R.R. 18, 226 U.S. 145 (1907). (Italics ours.)

In *Berdecía* v. *Tyrell, supra,* at p. 684, it is stated:

> "We have compared the proof in the case at bar with that of other cases in which the recognition was granted and we believe that it successfully meets any test in respect to its sufficiency." (Cases cited, including *Desmornes* v. *Unknown Heirs of Desmornes, supra.*)

The important thing is not that the evidence be admitted without objection from the party to whom it may prejudice, but that it constitute a means of proof which, taken together with other evidence, fixes the paternity on

the person appearing as the father in the baptismal certificate.

The doctrine of *Alvarez* v. *Alvarez,* 77 P.R.R. 862, to the effect that the admissions by defendants at a pretrial conference in an action of filiation that plaintiffs are the children of the predecessor in interest, but limited to the determination, after hearing the evidence, of the status of such children, are not tantamount to the voluntary recognition of the law now in force, was rejected in *Ocasio* v. *Díaz,* (decided June 27, 1963), when the author of the opinion stated, among other things: "That the *Alvarez* case was erroneously decided and we do not feel bound by its doctrine."

This rejection does not alter things in our case. The baptismal certificate is still a means of proof of some weight and, if it is taken together with the remaining evidence heard at the trial, it would serve to establish filiation.

We make the same remark as to the school record which contains the same information as the baptismal certificate.

It was established and accepted by plaintiff that, in *Berdecía* v. *Tyrell, supra,* Mercedes Berdecía's baptismal certificate was offered as part of defendants' evidence, that is, that the trial court had the opportunity of weighing this evidence and that thereafter it held that Mercedes Berdecía was the daughter of Félix Saurí Tyrell and Dolores Berdecía. That judgment was affirmed by our Honorable Supreme Court on May 23, 1961, and summarily affirmed on June 21, 1962, by the Court of Appeals for the First Circuit in *Tyrell* v. *Berdecía,* No. 6016, and a petition for a new hearing was denied February 17, 1964, by the Honorable Supreme Court of the United States in *Tyrell, et al.* v. *Berdecía,* No. 219, 1963 October Term.

The defense of res judicata is inspired in the need to end litigations. Hence, in order to plead said defense successfully, it is necessary not only that there be perfect

identity among the things, the causes, the litigants, and the capacity of the latter, but also the previous judgment, either by its nature or by provision of law, must definitively decide the question. *Meléndez* v. *Cividanes,* 63 P.R.R. 4; *Buscaglia, Treas.* v. *Tax Court,* 72 P.R.R. 576; *Miller* v. *Cía. Ron Carioca Destilería, Inc.,* 71 P.R.R. 662, 664.

However, in *Pérez* v. *Bauzá,* 83 P.R.R. 213, and specifically at pp. 217-220, the question of *res judicata* is dealt with as follows:

> "In general terms, it may be affirmed that the rule of res judicata is based on considerations of public policy and necessity: on the one hand, the interest of the State in terminating litigations in order that judicial issues may not be perpetuated, as stated by Castán, 1 *Derecho Civil Español Común* v. *Foral* 815, and on the advisability of impressing court decisions with due dignity (Judgment of the Supreme Court of Spain of July 5, 1924, 163 Jur. Civ. 504, III), and, on the other hand, the desirability of not submitting a citizen twice to the inconveniences which the litigation of the same cause entails. The doctrine is of Roman origin and was embodied in the maxim *'res judicata pro veritate habetur.'* In its relationship with the common law, it was translated into the propositions *'interest reipublicae ut sit finis litium'* and *'nemo debet bis vexari pro eadem causa.'* In its origin it presupposed an adversative or litigious proceeding and an adjudication on the merits. However, the complexities of the modern proceeding and the increase in litigation have resulted in its extension—by statutory channels—even to decisions which have not adjudicated the controversy on its merits. Examples of this development are Rule 41(b) under consideration and Rules 11.1 and 39.1(a) of 1958, which refer respectively to the defense of res judicata which may be interposed when in a

previous action a compulsory counterclaim has not been asserted, *González* v. *Agostini*, 79 P.R.R. 481 (1956); *Sastre* v. *Cabrera*, 75 P.R.R. 1 (1953); *cf. Cruz* v. *Ortiz*, 82 P.R.R. 802 (1961), and when the same action has been abandoned more than once, *Res Judicata—Two Dismissal Rule*, 65 A.L.R2d 642 (1959).

However, the courts have refused to apply rigidly the defense of res judicata if in so doing it defeats the ends of justice, especially if reasons of public policy are involved. *In re Spinosa's Estate*, 255 P.2d 843 (Cal. 1953); *Universal Const. Co.* v. *City of Fort Lauderdale*, 68 So.2d 366 (Fla. 1953); *Commissioner of State Insurance Fund* v. *Law*, 148 N.E.2d 136 (N.Y. 1958). This is particularly true in those cases in which the previous judgment is adverse to a minor ordinarily unable to protect himself against overreaching or improper conduct of his legal representative. *In re Di Carlo*, 44 P.2d 562 (Cal. 1935). As already stated, the doctrine rests upon the basic principle that there should be an end to litigation, but if the rigid application thereof would in practice defeat a right permeated in some way with public interest, the courts are inclined to a solution which would guarantee proper justice instead of rigidly applying a fiction of law which rests fundamentally upon a principle of convenience and procedural order. *Universal Const. Co.* v. *City of Fort Lauderdale*, 68 So.2d 366 (Fla. 1953). In other words, the rule is not absolute and should always be weighed with the equally salutary principle that justice should be done in every case. *Hodgson* v. *Applegate*, 155 A.2d 97 (N.J. 1959).

"There is no question that the action of filiation which is the vehicle granted by law for determining the family status of the citizen, is clothed with a great public interest and it even has constitutional tangencies, if it is so desired, thereby affecting the in-

dividual's dignity. Article II, § 1 of the Constitution of the Commonwealth of Puerto Rico declares, precisely, that the dignity of the human being is inviolable, and defines the equality of men before the law followed by the prohibition to discriminate by reason of *birth*.

"In the specific case under consideration in which (1) the judgment set up as res judicata did not adjudicate the merits of the cause of action exercised, and which is considered as a final adjudication only by statutory provision based upon the public convenience of the finality of judgments; (2) the action of filiation is vested with a public interest; and (3) the plaintiff is a minor sought to be held responsible for the lack of diligence of his mother in order to defeat his opportunity to wipe out the stigma of spurious child, we can not apply, in the process of weighing the two doctrines in apparent conflict, a norm which would bar the exercise of the action. This is the proper case for departing from the rigidity of res judicata. On the other hand, and considered from the viewpoint of the inconveniences which may be caused to the defendant and which would justify his protection under the defense of res judicata, his only act in the previous action whose judgment is invoked consisted in filing a motion challenging the jurisdiction of the court based on a technical ground. This motion was not even set for hearing. Nor is there present the other factor regarding repeated inconveniences to a litigant.

"In *Calaf et al.* v. *Calaf*, 17 P.R.R. 185, 203-07 (1911), this Court sustained the defense of res judicata in an action of filiation. This judgment was affirmed by the United States Supreme Court. *Calaf* v. *Calaf*, 232 U.S. 371 (1914). However, the facts involved in that case were distinguishable, since the judgment invoked was entered when the Court sustained the demurrers to the complaint predicated on the lack of

standing to sue, insufficiency of facts to constitute a cause of action, ambiguity, and prescription of the action of acknowledgement. We need not, therefore, elaborate on a discussion as to when we will apply, as a general rule, such defense in actions of filiation. Each case will be decided in accordance with the surrounding circumstances."

In footnote 6, *Pérez* v. *Bauzá, supra,* we are reminded that in *Monagas* v. *Vidal,* 170 F.2d 99, 106 (1948), the Court of Appeals for the First Circuit said that this Court (referring to our Supreme Court) must be given latitude in formulating and applying its doctrine of *res judicata* so as to conform with our peculiar local situation.

In a judgment of the Supreme Court of Spain of January 25, 1912, referring to § 138 of the Spanish Civil Code —equivalent to the last paragraph of § 126 of ours (31 L.P.R.A. § 505) it is said:

"The power granted by this section to challenge the recognition of a child cannot annul, pursuant to the second paragraph of the first transitory provision of the Civil Code, a status which, on the basis of previous legislation, is judicially sanctioned in a definitive manner."[8]

Scaevola comments the above-mentioned § 138, Vol. 3, p. 425, 1942 ed., as follows:

"Which acknowledgment does the Code mean? Judicial or extrajudicial? Although, considering the words of the section, it seems to refer to the one and to the other, inasmuch as it speaks of the prescriptions of the entire section, and the latter includes both, however, judicial recognition obtained by virtue of a final judgment constitutes *res judicata* and it is not

[8] Scaevola, Vol. 3, p. 424, 1942 ed.

possible, under the principles of Procedural Law, to bring a new suit to challenge what is already beyond discussion."

The judgment entered March 10, 1959, is sought to be challenged collaterally by a person born in 1955. To admit this suit and to fail to apply the doctrine of *res judicata* would be to prolong this suit forever and to open the door to a situation which would be very prejudicial to a citizen who, on several occasions, has resorted to the courts obtaining the adjudication on the merits of the contraversy conceiving him. The defense of *res judicata* lies, regardless of our former holding that plaintiff has no standing to sue in this case.

For the reasons above stated the complaint filed in this case is dismissed, and plaintiffs are ordered to pay the costs and the amount of $500.00 as attorney's fees.

Let this Judgment be filed and served.

Ponce, Puerto Rico, September 22, 1964.

(s) QUINTÍN MORALES RAMÍREZ
Superior Judge

APPENDIX B

Order

Division composed of Mr. Justice Perez Pimentel, as Chief Judge of Division, Mr. Justice Rigau, and Mr. Justice Davila

San Juan Puerto Rico, December 4, 1964

The preceding petition for review, is hereby denied. Considering the triviality of the petition, appellants are ordered to pay $200 attorney's fees.

It was so ordered by the Court as witnesses the signature of the Chief Justice.

(s) Luis Negron Fernandez
Chief Justice

I attest:

(s) Ignacio Rivera
Secretary